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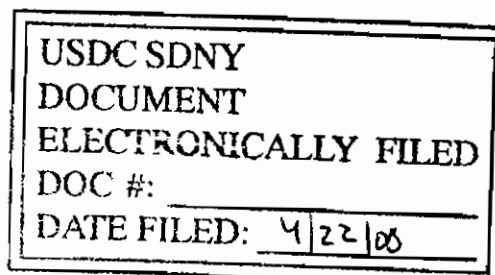
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- X
 WENDY EISERMANN, As Mother and Natural :
 Guardian of J.S., and WENDY EISERMANN, :
 Individually, :

Plaintiffs, :

-against- :

DAVID WALKER, M.D., THE DUTCHESS :
 MEDICAL PRACTICE, P.C., ROBERT :
 DWECK, M.D., and HUDSON RIVER :
 HEALTHCARE CENTERS, :

Defendants. :

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08 Civ. 3374 (DLC) (HBP)

ECF CASE

**STIPULATION AND ORDER
 OF SUBSTITUTION AND
VOLUNTARY DISMISSAL**

WHEREAS, on or about December 20, 2007, plaintiffs Wendy Eisermann, as mother and guardian of infant plaintiff J.S., and Wendy Eisermann, individually, filed a Summons and Complaint in the Supreme Court of the State of New York, Dutchess County, Index No. 8634/2007, against David Walker, M.D., the Dutchess Medical Practice, P.C., Robert Dweck, M.D., and Hudson River HealthCare, Inc.,¹ alleging, *inter alia*, that they committed negligent acts and omissions in providing medical care to infant plaintiff J.S; and

¹ Hudson River HealthCare, Inc., is incorrectly named in the caption of this case.

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WHEREAS, on or about April 4, 2008, Michael J. Garcia, United States Attorney for the Southern District of New York, removed plaintiff's complaint to this Court pursuant to section 224(c) of the Public Health Service Act, 42 U.S.C. § 233(c), and 28 U.S.C. § 2679(d)(2), based on the United States Attorney's certification, dated March 28, 2008, that defendants David Walker, M.D., Robert Dweck, M.D., and Hudson River HealthCare, Inc. were acting within the scope of their federal employment at all times relevant to the allegations of this complaint;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the plaintiffs and defendants David Walker, M.D., Robert Dweck, M.D., Hudson River HealthCare, Inc., and the United States of America ("United States"), by their respective counsel, as follows:

1. Pursuant to section 224(a) and (c) of the Public Health Service Act, 42 U.S.C. § 233(a) and (c), and 28 U.S.C. § 2679(d), the United States shall be substituted as defendant in this action to the extent plaintiffs' claims are against David Walker, M.D., Robert Dweck, M.D., and Hudson River HealthCare, Inc.; and
2. Plaintiffs' claims against David Walker, M.D., Robert Dweck, M.D., and Hudson River HealthCare, Inc. are dismissed with prejudice and without costs or attorney's fees to any party; and
3. Plaintiffs' claims against the United States are dismissed without prejudice and without costs or attorney's fees to any party because plaintiffs have not presented an administrative claim to the appropriate federal agency as required under 28 U.S.C. § 2675(a);
4. The parties understand and agree that this stipulation does not waive any rights of any party under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, or any other applicable law; and

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5. The parties understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: Bronx, New York
April 18, 2008

Dated: New York, New York
April 18, 2008

WOLF & FUHRMAN, P.C.
Attorneys for Plaintiffs

By: 

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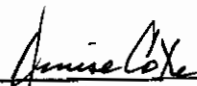
MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
*Attorney for Defendants David
Walker, M.D., Robert Dweck, M.D.,
Hudson River HealthCare, Inc., and
the United States*

By: 

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SO ORDERED.

Dated: New York, New York
April 22, 2008


HON. DENISE L. COTE
UNITED STATES DISTRICT JUDGE

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